

Appl. No. 02/780,961
Atty. Docket No. 9534
Amdt. dated February 23, 2006
Reply to Office Action of November 14, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1-9 are pending in the present application. No additional claims fee is believed to be due.

Claims 10-20 have been withdrawn as a result of a previous restriction requirement.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102 Over Redwine (US 5,891,121)

Claims 1-5 are rejected under 35 USC §102(b) as being anticipated by Redwine (US 5,891,121).

The Office Action states that Redwine discloses the "ridges and recesses" as disclosed at column 19, line 35, as "having glue strips (44) attached to crests of said ridges" as disclosed at column 14, lines 18-20).

Applicants have carefully read the referenced portions of Redwine, and do not see any reference to the glue strips 44 as being anywhere near the ridges. Glue strips 44 are disclosed (as shown in FIG. 1) as being on the portion of the article that affixes to the crotch portion of the panty, and not on or near the wings of the article. Likewise, the "ridges" referred to in the Office Action are on the wings of the article, and are nowhere near the indicated glue strips.

Therefore, the Office Action fails to show where in Redwine is found any disclosure of the "glue strips attached to crests of said ridges" as recited in Claim 1.

Because it appears that Redwine does not disclose "glue strips attached to crests of said ridges" as recited in Claim 1, Redwine fails to identically disclose every element of the claimed invention.

Accordingly, Applicants respectfully request the withdrawal of the 35 USC §102(b) rejection of Claim 1 and its dependent claims 2-5.

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Rejection Under 35 USC §103(a) over Redwine (US 5,891,121)

Claims 7 and 8 are rejected under 35 USC §103(a) as being unpatentable over Redwine (US 5,891,121).

Applicants submit that the rejection of the present invention under 35 U.S.C. §103 must comport with the standard set forth in *Graham v. John Deere Company* 383 US1, 148 USPQ 459 (1966), explained in MPEP Section 706. The Supreme Court's guidance in that landmark case, requires that, to establish a *prima facie* case of obviousness, the USPTO must

- (1) Set forth the differences in the claims over the applied references;
- (2) Set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) Explain why the proposed modification would be obvious.

To satisfy Step (3), the Patent Office must identify where the prior art provides a motivating suggestion to make the modification proposed in Step (2). See *In re Jones*, 958 F2d 347, 21USPQ 2d 1941(Fed. Cir. 1992). The mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch*, 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992).

With respect to Claim 1, from which Claims 7 and 8 depend, the Redwine reference does not disclose "glue strips attached to crests of said ridges" as recited in Claim 1. Applicants can find no such modification being suggested by Redwine.

In fact, the Office Action provided no motivation to modify Redwine in such a manner so as to achieve the claimed invention, specifically, to achieve a winged product having at least one corrugated region and having "glue strips attached to crests of said ridges" as recited in Claim 1. In fact, as noted above, it appears that Redwine provides no disclosure, teaching, or suggestion of putting the glue strips 44 on the crests of ridges in the wings of the article. Therefore, the proposed modification that must be found in Redwine is to put the glue strips 44 on the crests of ridges in the wings of the article cannot be made. Again, the Office Action has not provided any motivation or suggestion in Redwine for making such a modification.

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Accordingly, Applicants respectfully submit that the Office Action has failed to make out a *prima facie* case of obviousness in accordance with MPEP §2143. Applicants respectfully request that the rejection of Claim 7 and 8 be withdrawn.

Rejection Under 35 USC §103(a) over Redwine (US 5,891,121) in view of Chappell et al. (US 5,518,801)

Claims 6 and 9 are rejected under 35 USC §103(a) as being unpatentable over Redwine (US 5,891,121) in view of Chappell et al. (US 5,518,801).

Applicants submit that the rejection of the present invention under 35 U.S.C. §103 must comport with the standard set forth in *Graham v. John Deere Company* 383 US1, 148 USPQ 459 (1966), explained in MPEP Section 706. The Supreme Court's guidance in that landmark case, requires that, to establish a *prima facie* case of obviousness, the USPTO must

- (1) Set forth the differences in the claims over the applied references;
- (2) Set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (4) Explain why the proposed modification would be obvious.

To satisfy Step (3), the Patent Office must identify where the prior art provides a motivating suggestion to make the modification proposed in Step (2). See *In re Jones*, 958 F2d 347, 21USPQ 2d 1941(Fed. Cir. 1992). The mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch*, 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992).

With respect to Claim 1, from which Claims 6 and 9 depend, the Redwine reference does not disclose "glue strips attached to crests of said ridges" as recited in Claim 1. Therefore, the modification that the references must provide is to make a wing portion of an article wherein on the wing portion are "glue strips attached to crests of said ridges" as recited in Claim 1. As stated above, applicants can find no such modification being suggested by Redwine alone.

Chappell fails to remedy the deficiency of Redwine. That is, the Office Action fails to indicate where in Chappell can be found disclosure of "glue strips attached to

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crests of said ridges" on wings of an article so as to arrive at the claimed subject matter in accordance with Step (2) above. The element appears to be missing from either or both cited references.

Therefore, Applicants submit that the proposed modification that must be found in the prior art, i.e., to put the glue strips 44 on the crests of ridges in the wings of the article, is not found in the references themselves. The Office Action has not provided any motivation or suggestion in the cited references for making such a modification.

Accordingly, Applicants respectfully submit that the Office Action has failed to make out a *prima facie* case of obviousness in accordance with MPEP §2143. Applicants respectfully request that the rejection of Claims 6 and 9 be withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-9 is respectfully requested.

Respectfully submitted,

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By


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